IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5793 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE POLICE CONSTABLES
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
Ms Tula for Mr YN Oza for the Petitioner
Mr Makwana, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/02/2007

ORAL JUDGMENT:

The present petition is filed by the Gujarat State Police Constables, Head Constables Karmachari Mandal, SRP Group-II, Ahmedabad through its President wherein the petitioner-union has prayed for issuance of the suitable writ directing the respondents to pay travelling allowance and daily allowance to all the police constables of SRP Group-II having

headquarers at Saijpur Bogha as per the rules. It is also prayed that Rule 446 of the Bombay Civil Service Rules may be declared ultra vires as it is in violation of Article 14 and 16 of the Constitution of India. The case of the petitioner-union is that the petitioner is a registered union of Constables of SRP Group-II. As per the averments made in the petition, the State Government has stopped paying the travelling allowance and daily allowance to the members of the petitioner-union from 23.2.1986 by resorting to Rule 446 of the Bombay Civil Service Rules. The case of the petitioner-union is that the headquarter of the petitioner-union was at Gondal and thereafter it was shifted to Saijpur Bhogha, Ahmedabad. After such shifting of headquarter, the constables, who are 1062 in number, were getting the travelling and daily allowances initially but when the said area was included within the limits of Ahmedabad Municipal Corporation from 23.2.1986 the members of the petitioner-union are not getting such benefits in view of the provisions of Rule 446 of the Bombay Civil Service Rules. The said Rule 446 is incorporated in the petition, which reads as under:-

> "446. Daily allowance may not be drawn for any day on which a Government servant does not reach the point outside the radius of 8 km from his headquarters or beyond municipal limits, whichever is farther, or returns to his headquarters from a similar point."

The petitioner-union has challenged the said Rule on the ground that the same is violative of Article 14 and 16 of the Constitution of India and arbitrary as ultimately the distance between the office of the Police Commissioner and the headquarters of the members of the petitioner-union is 12 kilometers and, therefore, whether the members of the petitioner-union are required to travel within the municipal area or not is irrelevant. It is further contented that, ultimately, what is required to be considered is the distance which is required to be covered by the

members of the petitioner-union.

The petition is opposed by the respondents by filing affidavit-in-reply of one M.B.Jadeja, Armed Dy.S.P., State Reserve Police Force, Group-II. As per the averments contained in paragraph 7 of the reply, the Urban Development and Urban Housing Department of the Government of Government vide its Notification dated 5.2.1986 has included Saijpur Bhogha area in the city limits of Ahmedabad Municipal Corporation since 23rd February 1986. Before the said date, Saijpur Bhogha headquarter was in Saijpur Bhogha Nagarpalika and Police Officers deputed for bandobust duty in Ahmedabad were required to travel for more than 8 kilometers and, therefore, they were paid daily allowance and travelling allowance. However, since the area is now included in the Ahmedabad Municipal Corporation, said benefit is withheld from 23.2.1986. It is pointed out in the reply that in the normal circumstances in no case more than eight hours duty is taken from the Constable and if the duty is far from the headquarter then Government vehicle is used and the concerned Police Constable uses the Government vehicle to reach his duty point and to reach his headquarter at the end of his working hours.

Learned counsel for the petitioner is not in a position to point out as to how Rule 446 of the Bombay Civil Service Rules is in any way offending the Article 14 of the Constitution of India. Considering the aforesaid affidavit-in-reply, I do not find any substance in the petition.

There is also additional point for not entertaining this petition, namely, the petitioner-union is no more in existence now. Moreover, the question as regards the distance, etc. is required to be considered in individual case. The petitioner-union has not joined any of the employees as co-petitioners. Now when the petitioner-union itself is not in existence, there is no question of granting any relief as prayed for by

the petitioner-union, which is of a general nature.

Considering the aforesaid view of the matter, the petition is required to be dismissed and is accordingly dismissed. Rule is discharged. Interim relief is vacated.

(P.B.MAJMUDAR, J.)

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